



REALTOR®

**MASSACHUSETTS
ASSOCIATION
of REALTORS®**

THE VOICE FOR REAL ESTATE™ IN MASSACHUSETTS

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**Federal Communications Commission
Office of the Secretary**

July 11, 2003

K. Dane Snowden, Chief
Consumer & Government Affairs Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: CG Docket No. 02-278

Dear Chief Snowden:

The Massachusetts Association of REALTORS® (MAR) submits the following comment regarding the proposed regulations to implement the national do-not-call registry.

In January of 2003, Massachusetts established a similar anti-telemarketing statute. Chapter 265 of Acts of 2002, An Act Regulating Telemarketing Solicitations, excludes telephone sales calls in which the sale of goods or services is not completed and payment is not authorized until after a face-to-face sales presentation by the telephone solicitor or meeting between the solicitor and customer has taken place. This is not unlike similar provisions passed in New York and several other states.

There is a critical but necessary distinction between companies who engage in unsolicited telephone sales calls and those that use the telephone as an extension of their business. Our 17,000 members clearly fall into the latter category. The current exemptions has proven to work quite well for our members since the process of listing a home or writing up an offer involves such a face-to-face meeting. In fact, according to the Massachusetts State Board of Registration of Real Estate Brokers, this long established business practice has not been a source of consumer complaints. Our "face to face exemption" is a legitimate business concern which is designed to recognize that businesses that are local in nature and practice are fundamentally different from telemarketers whom our law seeks to regulate. Through the efforts of Massachusetts General Court and the Attorney General our law and regulations went into effect on January 1, 2003. To date, we are not aware of a single consumer complaint about a REALTOR contacting them for a personal meeting.

Over a decade ago, Congress adopted a broad set of rules governing the telemarketing industry. The key provisions of the federal TCPA were aimed at restricting the use of automatic, anonymous, telephone dialing systems. The primary concern was the use of these solicitations without prior expressed consent of the consumer. In doing so, the law struck a proper balance between individual privacy and legitimate business practice.

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Since its enactment, states have appropriately responded to market forces and the demands of consumers by establishing laws which are best suited to the specific needs of each jurisdiction. Just three months ago, consumers in Massachusetts saw a reduction in calls beginning April 1, 2003 when the very first list was sent to telemarketers.


By virtue of the TCPA, states have a legitimate role in regulating telemarketing. Federal law should not undermine these efforts or preempt Massachusetts do not call efforts. Jurisdiction over interstate matters has typically fallen within the prevue of the states, with intrastate matters resolved at a national level. The Massachusetts's Attorney General and Office of Consumer Affairs has successfully protected consumers and enforced the state statute within the Commonwealth and across state lines.


In keeping with this, MAR supports the position of the FTC that these regulations should apply to interstate calls only. We thereby respectfully request the FCC to maintain consistency in the new regulations by adopting a similar provision. MAR urges the FCC to amend the rules to exclude intrastate activity.

The final implementation of this law is important for consumers, in protecting privacy and avoiding confusion. However it must be considered in light of the original intent of the TPCA and within the context of existing state statute. Like many states, that have passed similar telemarketing regulations Massachusetts has responded to the demands of technology and the needs of consumers responsibly. It should now be permitted the time and the autonomy to delineate those who engage in telemarketing and those who simply utilize the phone as a part of every day business.

Thank you for you consideration of this request. Please do not hesitate to contact our General Counsel Steve Ryan if you have any questions or concerns regarding this issue.

Sincerely,


John Fridlington
Executive Vice President


Peter P. Casey
President

Cc: Senator Edward Kennedy
Senator John Kerry
Representative John Olver
Representative Richard Neal
Representative James McGovern
Representative Barney Frank
Representative Marty Meehan
Representative John Tierney
Representative Edward Markey
Representative Michael Capuano
Representative Steve Lynch
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